

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

why (15)
JUDGE'S CO

JOHN RICHARD JAE
Plaintiff,

vs.

KENNETH D. KYLER, et al.,
Defendants.

FILED
HARRISBURG, PA

SEP 21 2001

CRTI No. 12 CR-00-0315
U.S. District Judge Ramo
Magistrate Judge Smyser

MARY E. D'ANDREA, CLERK
Per 9/8

PETITION FOR RECONSIDERATION OF U.S. DISTRICT JUDGE'S SEPTEMBER 13, 2001
ORDER AND ARGUMENTS OF LAW IN SUPPORT

Plaintiff John Richard Jae, as a Layman Unlettered in the Arts and Sciences of the Law & Legal Procedures within the United States, now files this Petition For Reconsideration of U.S. District Judge's September 13, 2001 Order And Arguments Of Law In Support, Herein & avers, deposes & states:

1. Plaintiff Jae, first of all, states, as he stated set forth in his Petition, "Furthermore, Plaintiff avers & submits, that, Prison Officials cannot deny a prisoner his legal research, scientific or otherwise. Holding papers in an area beyond prisoner control violates the case's integrity. Prisoners reluctance to supply sufficient cell storage space is no excuse to abridge rights. The American Correctional Association (ACA) Standards for Access to the Courts grants, -- the right of access to the courts minimally provides that inmates have the right to present any issues including the following: challenging the legality of their conviction or confinement; seeking redress for illegal conditions or treatment while under correctional control; pursuing remedies in connection with civil legal problems; and asserting against correctional or other government authority or other while protected by constitutional or statutory provisions common law. Inmates seeking judicial relief are not subject to repetitive or penalties because of the decision to seek relief of this court should not be a bar. Furthermore, the Plaintiff avers & submits that U.S. District Judge Ramo's September 13, 2001, order, not only violates & ignores the controlling Federal Case Law Authorities, as set forth above, herein, but also violates & ignores

arguments & citations of Authorities therein Plaintiff's Motion / Petition for Writ of Mandamus & Brief in Support, at 6-8, and under such controlling & other arguments & citations of Authorities, it makes no difference how many times the Plaintiff is able to access his stored legal property here, as just the fact that Prison Officials here hold such in an and beyond this Plaintiff's / Prisoner's control by and under the law, violates each of his Cases' Integrity, as such is supposed to with the Plaintiff in his cell where he has immediate access. Such when he needs any of such to prepare & file a pleading in any of his pending 12 State and / Federal court cases, including this one.

Furthermore, such arguments & contentions of the Defendants in this memorandum in opposition to Plaintiff's ~~motion~~

Furthermore, the U.S. District Judge's September 13, 2000, (and also the U.S. Magistrate Judge's prior order of August 14, 2000, the fact(s) that this Plaintiff has a long & lengthy significant history of serious mental health illness disease, that he is a mental health case & by & under the controlling & other Federal law & also under the Prison Officials own Prison Policy / Rules, he is not even supposed to be in the Prison's Special Management Unit and that confinement in such is illegal and that if he was not so illegally confined in this unit, then he would have all of his legal property in his cell with him & since Prison Officials here upon illegally confining this Plaintiff in this SMU in violation of controlling & other Federal Law, they should not and must not also violate the controlling & other Federal law a second time by denying the possession of and access to all of his legal materials, court cases & papers & law books in his cell with him and anything less would be a violation of the controlling & other Federal law and of the right of access to the courts.

If this Plaintiff avers that he is not receiving the access to his legal property which he needs to his court case papers, legal materials & other property in order to enable him to prepare & file a pleading in

and does not have enough paper, carbon(s) and envelopes to enable him to file & serve his court pleadings in his pending court case, as this Plaintiff does herein this civil case sub judice, then it becomes incumbent upon Prison Officials and they have a legal duty and obligation under Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 491, 52 L.Ed. 2d 1497 (1977), to ensure that this Plaintiff has adequate access to whatever legal materials, court case files/papers & law books and whatever amount of paper, carbon paper & envelopes that he needs to prepare such pleading(s) and they may not, by law, deny any of such to him and if they do, as the Prison Officials do here, then this court has a legal duty and obligation under Bounds to order Prison Officials to provide all of such to him and by her September 13, 2001, Order, the U.S. Magistrate Judge violates fails to honor such legal duty & obligation and it makes no difference whatsoever at all that Plaintiff had adequate access to his court case files/papers, materials & law and/or that he was provided enough paper to enable him to file some other legal pleading in the case at some point(s) in the past, for the controlling question is, and must be, does the Plaintiff have such adequate access to his Court Case Files & papers & his legal materials & law books and to enough paper, carbon paper & envelopes. Plaintiff avers & submits that he does not, herein this case.

Furthermore, this Court erred in basing its September 13, 2001 Order, herein this case, upon its Order of August 31, 2001, in another of this Plaintiff's Civil Rights Actions, "Jare vs. Dragonich et al" Civil No. 1:00-cv-00-2123, in that, the circumstances of that case are different than those in this instant case, as herein this instant case this Plaintiff needs a total of 1 piece of paper and 8 carbon in order to complete his pleadings, herein, while he needed only 30 pieces of paper & two Carbons to complete his pleadings in "Jare vs. Dragonich et al" Civil No. 1:00-cv-00-2123.

Plaintiff furthermore avers & submits that, in her September 2001, order, U.S. District Judge Rambo, ~~er~~ Breasly states,

"In his appeal, Plaintiff cites to an order of this court in another of his cases, CIVIL No. 1:00-cv-00-2123, in which this court recognized Plaintiff's need for his case file in order to respond to a motion by Defendants."

however, such is just "not" true at all, as in his Appeal, this Plaintiff cites 2 orders of this court/judge, in two other of his cases, Jae vs. Long et al, CIVIL No. 1:00-cv-99-0071 and Jae vs. Laskey, CIVIL No. 1:00-cv-99-1610, dated, October 3, 2000, a full two months and then some before Jae vs. Dragovich et al, CIVIL No. 1:00-cv-00-2123 was even filed with this court & thus, this Plaintiff nowhere in his Appeal even mentions CIVIL No. 1:00-cv-00-2123 case & thus, the U.S. District Judge ~~is~~ wrong on such.

Plaintiff furthermore avers & submits that, in her September 13, 2001, U.S. District Judge Rambo ~~er~~ states,

"Before the court is an appeal by Plaintiff from an order of the magistrate judge denying Plaintiff's motion to require prison officials to return to Plaintiff all his legal materials, case files, and law books, to provide him with paper, carbon paper, and envelopes for sanctions against Defendants, and for a contempt citation against Sharon Sebek, p. 21

and that while the above is true & correct, the Plaintiff also appeals therein such same appeal from the magistrate judge's order which denies Plaintiff's motion for order requiring Defendant Dragovich And Sgt. Greene Superintendent Carner Blaine, Jr., to Allow Plaintiff's Communication with And Write to Inmate Norman Johnston in the SCI-Camp Hill. However, the U.S. District Judge fails to address/rule on such in her September 13, 2001, order, & thus, ~~the~~ Reconsideration of the 9/13/01, should be granted her ~~to~~ so.

Plaintiff furthermore avers & submits that, in her September 13, 2001, U.S. District Judge Rambo, states-

"With regard to ~~the~~ mandamus Reliant ~~to~~ writing materials, this memorandum incorporates this court's memorandum order of August 31, 2001 in CIVIL No. 1:00-cv-00-2123, a copy of which is attached hereto as Exhibit A."

however, this Plaintiff objects to this court doing such, as such August 31, 2001, memorandum order, in CIVIL No. 1:00-cv-00-2123, ~~is~~ contrary

1/ See U.S. District Judge Rambo's 9/13/01, order, at 1.

2/ See ~~Id.~~ at 1.

3/ See ~~Id.~~ at 2.

to Federal law & such 8/31/01, memorandum under MTs states for
and makes false allegations, Pn th at, Pn such memorandum and,
U. S. District Judge, erroneously states,

11-

By way of back ground, on or February 20, 1990, Plaintiff has filed fourteen lawsuits in this district - three cases are still open, two have been dismissed by stipulation, three were dismissed as frivolous, five were dismissed for failure to pay the filing fee and for frivolousness, and one was closed by the grant of summary judgment for Defendants - 114

however, this Plaintiff avers & submits that, the above is not to be accurate, as he has not had three case in this District dismissed as frivolous and the U.S. District Judge fails to give the cite for such three case which she can not as such do not exist and as to the five cases which she claims were dismissed for failure to pay the filing fee and for frivolousness, it is true & correct these five cases ~~were~~ were dismissed due to Plaintiff's failure to pay the Court's outrageous & excessive \$150.00 filing fee, however it is not true & is incorrect that such cases were also dismissed for frivolousness and again the U.S. District Judge fails to even give the cite for any one of such -
Further, as to a question of law -

Furthermore, in her August 31, 2001, order, U.S. District Judge Rambo, states,

11 Plaintiff has clearly abused the resources available to him in order to engage in frivolous litigation. 11/6/

however, the Plaintiff strongly objects and take strong exception to such outrageous, specious and blatantly untrue statement the U.S. District Judge, as she maliciously makes such a. offering any supporting evidence that such is true and that because she cannot do so, as such "is" blatantly untrue.

Since 1998, this Plaintiff has filed 11 cases with this District
4/ See Appendix A to the U.S. District Judge's 9/13/01 order, at 2.

5/ To the contrary of what the U.S. District Judge states, there has been cases dismissed for failure to pay the filing fee. They are: Jack Long et al. CIVIL No. 1 = CR-98-0108, Jae vs. Hon. et al. CIVIL No. 1 = CR-98-0117, Jae vs. Gleny et al. CIVIL No. 1 = CR-98-0115, Jae vs. Gleny et al. CIVIL No. 1 = CR-98-0116, Jae vs. Clark et al. CIVIL No. 1 = CR-00-1090, and two others.

6. See Appen B at 70-71; see also 9/18/07 under # 2.

which are: Jae vs. Yung, Civil No. 1:CV-98-0108; Jae vs. Hann, et al., No. 1:CV-98-0114; Jae vs. Long, et al., Civil No. 1:CV-98-0115; Jae vs. Galt, et al., Civil No. 1:CV-98-1515; Jae vs. Laskey, Civil No. 1:CV-99-16; Jae vs. Wexford Health Service, Inc., Civil No. 1:CV-99-17; Jae vs. Galt, et al., Civil No. 1:CV-1090; Jae vs. Wexford Health Services, Inc., Civil No. 1:CV-1534; Jae vs. Dragovich, et al., Civil No. 1:CV-00-2123; and Jae vs. C.O. Lester, Civil No. 1:CV-01-0041, and additionally Defendant removed two cases which this Plaintiff had filed in the District Courts to this U.S. District Court, this here instant case Jae vs. Long, et al., Civil No. 1:CV-99-0071 and Jae vs. Long, et al., Civil No. 1:CV-99-0071, was resolved by the grant of summary judgment to Jae in this here instant case, Jae vs. Dragovich, et al., and Jae vs. C.O. Lester are all still pending before this Court. All other cases cited above were dismissed for failure to pay filing fee. Not once in any one of Plaintiff's ^{over} 13 Civil Actions, as above-cited, did this Court ever receive any pleading that this Plaintiff filed in any one of such cases was frivolous nor that any of such cases were frivolous prior to August 31, 2001, Illegal Memorandum Order in Jae vs. Dragovich, et al., Civil No. 1:CV-00-2123, and given such, there is no proof for the U.S. District Judge's statement that, "Plaintiff has deplete the resources available to him in order to engage in frivolous litigation." This Plaintiff has not done at all, and lastly, the U.S. District Judge's August 31, 2001, Memorandum Order in Civil No. 1:CV-00-2123 is in violation of the U.S. Supreme Court's decision/holding, in 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 725 (1977), where Mr. Justice White, writing for the majority, stated & held:

"more over, our decisions have consistently required States to shoulder affirmative obligations to assure all prisoners meaningful access to the courts. It is indisputable that indigent inmates must be provided at State expense with paper and pen to draft legal documents, with notarial services to authenticate them, and with stamps to mail them." (Bonds, 97 S.Ct. at 1490).

United States District Court For The Eastern District of Pennsylvania, In
Wade v. Kane, 448 F. Supp. 678 (E.D.Pa. 1978),

Finally, those Graterford inmates who are indigent have indisputable rights to be provided at state expense with paper and pen to draft legal documents. *Id.*, at 821-25; *Boudewijn Smith, supra*, 97 S. Ct. 1496. These rights have been violated. Moreover, because the State must provide indigent prisoners with the basic tools of an adequate defense or appeal, when tools are available for a price to other prisoners. *Britt v. North Carolina*, 404 U.S. 226, 227, 92 S. Ct. 431, 433, 30 L. Ed. 2d 40 (1971), the failure to make available writing materials and implements to indigent prisoners violates the Equal Protection Clause of the Fourteenth Amendment as well as the right of access to the courts. As a result, no justification offered by defendants could alter this conclusion of constitutional deprivation.

and thus, the U.S. District Judge in this instant case has abused her discretion & authority by her memorandum order in CRIMINAL-00-2123 and in this instant case and such 9/13/01 order, herein must be reconsidered and then vacated.

Finally, the Plaintiff reverses & submits that, the U.S. District Court should reconsider her order of 9/13/01, that, Plaintiff shall file his response to Defendants' motion for summary judgment no later than September 28, 2001, due to the fact that this Plaintiff has other legal pleadings due in other cases of his, which must be filed first before this, and he will not have enough of his \$10 monthly postage allotment for the postage costs to mail out his response to Defendants' motion for summary judgment and supporting documents by September 28, 2001, and therefore, this Court should reconsider her 9/13/01 order and allow this Plaintiff until October 4, 2001, in which file his response to Defendants' motion for summary judgment, and that no further enlargements of time will be granted.

RESPECTFULLY SUBMITTED:

John Richard Jue

MR. JOHN RICHARD JUE, #BQ-321

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Dated: 16th SEPTEMBER 2001: (S)